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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 DANIEL KLEEGERG, et al.,

4 Plaintiffs,

5 v.

16 Civ. 9517 (LAK)

6 WENDY EBER, et al.,

7 Defendants.

Trial

8 -----x  
9 New York, N.Y.  
September 15, 2021  
9:55 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

12 District Judge

13 APPEARANCES

14 BROOK & ASSOCIATES, PLLC  
15 Attorneys for Plaintiffs  
16 BY: BRIAN C. BROOK

17 FARRELL FRITZ, P.C.  
Attorneys for Defendants  
18 BY: KEVIN P. MULRY  
FRANK T. SANTORO  
-and-

19 HERBERT LAW  
Attorneys for Defendants  
20 BY: JOHN HERBERT

21 ALSO PRESENT:  
22 ALI L. KRAL, Paralegal  
SAMANTHA SKORIAK, Paralegal

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Liebman - Direct

1 (Trial resumed)

2 THE COURT: Good morning, everyone.

3 OK. Counselor, your next witness.

4 MR. BROOK: Plaintiffs call Glenn Liebman to the  
5 stand.

6 GLENN LIEBMAN,

7 called as a witness by the plaintiffs,

8 having been duly sworn, testified as follows:

9 THE COURT: All right, counselor. You may proceed.

10 MR. MULRY: Your Honor, if I could just have a moment.  
11 With respect to Mr. Liebman's testimony, we had made objections  
12 and Mr. Brook had filed an opposition. We've conferred this  
13 morning, and, consistent with some of your rulings yesterday,  
14 what we would ask is that Mr. Liebman's direct testimony come  
15 in subject to those objections and the parties can fully  
16 address those with the Court post trial.

17 THE COURT: Yes. OK.

18 MR. MULRY: Thank you, your Honor.

19 (Discussion held off the record)

20 THE COURT: OK. Let's go ahead.

21 MR. BROOK: Yes, your Honor.

22 DIRECT EXAMINATION

23 BY MR. BROOK:

24 Q. Good morning, Glenn.

25 A. Good morning.

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Liebman - Direct

1 Q. This is going to be pretty brief, at least my part of this.

2 You were retained as an expert in this case a little  
3 over three years ago. Is that right?

4 A. Yes.

5 Q. And you prepared an expert report in connection with that  
6 retention?

7 A. Yes.

8 Q. And since that expert report, did you work with me to  
9 prepare a declaration of your testimony for this case?

10 A. Yes.

11 Q. Did you review that testimony carefully and contribute to  
12 it as much as necessary for it to reflect your own opinions and  
13 conclusions with respect to this case?

14 A. Yes.

15 Q. And does that report also include your qualifications to  
16 testify as an expert witness?

17 A. Yes.

18 MR. BROOK: Your Honor, to the extent necessary,  
19 plaintiffs offer Glenn Liebman as an expert witness on the  
20 subject of business appraisals and to a very limited extent  
21 accounting based on his --

22 THE COURT: I do not follow the practice of having  
23 proffers.

24 MR. BROOK: OK.

25 Q. Do you have a copy of Plaintiff's Exhibit 1004 in front of

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Liebman - Direct

1 you?

2 A. Yes.

3 Q. Could you please flip through that and check the last page  
4 and see if that is your signature at the end there.

5 It's also up on the screen.

6 A. Yes.

7 Q. Did you sign that understanding that you were doing so  
8 under penalty of perjury?

9 A. Yes.

10 Q. And do you reaffirm the testimony that you gave in that  
11 declaration here today?

12 A. Yes.

13 MR. BROOK: Plaintiffs have no further questions.

14 THE COURT: Thank you.

15 Cross-examination.

16 MR. BROOK: Oh, sorry. But, although no further  
17 questions, plaintiffs do offer into evidence certain exhibits  
18 referenced in Mr. Liebman's testimony at this time.

19 THE COURT: Tell us what they are.

20 MR. BROOK: Yes. Exhibit 66, 75. I will note that,  
21 in the report -- or, I'm sorry -- in the declaration, Exhibit  
22 75 is referenced at Exhibit 264 before recognizing that it was  
23 a duplicate of something used at a deposition. So I just  
24 wanted to note that, that his testimony will say Exhibit 264  
25 but we're offering it as 75 because it's also referenced in --

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Liebman - Cross

1 THE COURT: So it's formerly 264? Is that the idea?

2 MR. BROOK: It was formerly both. So it's now solely  
3 Exhibit 75 to avoid duplication.

4 THE COURT: Go ahead.

5 MR. BROOK: Exhibits 66, 75, 119, 120, 150, 180, 186,  
6 206, and then all the Exhibits 210 through 219, which are  
7 financial statements for Eber-Connecticut.

8 THE COURT: All right.

9 MR. BROOK: And there are no objections to those  
10 exhibits.

11 THE COURT: Received.

12 MR. MULRY: No objection.

13 (Plaintiff's Exhibits 119, 120, 150, 180, 186, 206,  
14 and 210 through 219 received in evidence)

15 THE COURT: Cross-examination.

16 MR. MULRY: Thank you, your Honor.

17 CROSS-EXAMINATION

18 BY MR. MULRY:

19 Q. Good morning, Mr. Liebman.

20 A. Good morning.

21 Q. My name is Kevin Mulry, and I'm an attorney for the  
22 defendants in this case.

23 You are a member of a firm that performs business  
24 valuation, forensic accounting, litigation report, and expert  
25 witness testimony, correct?

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Liebman - Cross

1 A. Yes.

2 Q. About 75 percent of your work is matrimonial?

3 A. Roughly, yes.

4 Q. You've developed several opinions with respect to this  
5 case, correct?

6 A. Yes.

7 Q. And you've prepared an expert report?

8 A. Yes.

9 Q. And while the expert report is not going to be in evidence,  
10 it's identified as Plaintiff's Exhibit 127, so we may be  
11 referring to that at points during your testimony today.

12 Now, do you recall preparing your expert --

13 MR. MULRY: Yes, your Honor.

14 THE COURT: Let me just understand the prior answer.  
15 When you say 75 percent of your work is matrimonial, is that  
16 coextensive with or does it overlap with the business valuation  
17 work that you do?

18 THE WITNESS: It overlaps, your Honor. We do -- we  
19 are a firm that does litigation valuation for the most part,  
20 valuations for other reasons, but the primary course of work  
21 for us is litigation valuation, and within that space, it's  
22 about 75 percent matrimonial business valuation and then 25  
23 percent in matters such as the shareholder disputes partnership  
24 and things of that nature.

25 THE COURT: So just to have complete clarity, when you

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Liebman - Cross

1 talk about "matrimonial," you're talking in the main about  
2 valuation of businesses usually privately held in connection  
3 with the division of assets in matrimonial disputes. Is that  
4 right?

5 THE WITNESS: Yes, your Honor.

6 THE COURT: OK. Let's go on.

7 BY MR. MULRY:

8 Q. So you prepared your expert report. At that time -- you're  
9 aware that Frank Torchio is the defendants' expert in this  
10 case, correct?

11 A. Yes.

12 Q. And at the time you prepared your expert report, you had  
13 reviewed the expert report of Frank Torchio, right?

14 A. Yes.

15 Q. So you had an opportunity in your expert report to respond  
16 to the opinions that were contained in Frank Torchio's expert  
17 report.

18 A. Yes.

19 Q. And you put all of the opinions you had arrived at in your  
20 expert report, correct?

21 A. Yes.

22 Q. You submitted your direct testimony today, and that is  
23 Plaintiff's Exhibit 1004. Correct?

24 A. Yes.

25 THE COURT: So far you have not asked a single

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Liebman - Cross

1 question that called for anything that did not either occur in  
2 my presence this morning or that I did not read in the report  
3 that came into evidence. And I would like to move this along.

4 MR. MULRY: OK, your Honor. I will do that. My next  
5 question is:

6 Q. Is there any opinion -- if there is any opinion in your  
7 expert report that is not in your direct testimony, you are not  
8 offering that opinion in this case. Is that correct?

9 A. Could you repeat that question?

10 Q. Sure. If there is an opinion that was in your expert  
11 report that is not in your direct testimony, Plaintiffs'  
12 Exhibit 1004, you're not offering that opinion in this case.

13 MR. BROOK: Objection.

14 THE COURT: Sustained.

15 Q. Let's talk about some general considerations on valuation.  
16 You agree that whether economic realities are comparable in  
17 given time periods is something that should be taken into  
18 account in valuation?

19 A. I'm not sure I understand your question. Economic  
20 realities?

21 Q. I'll move on from there.

22 In general, valuation, in valuation, you should not  
23 consider subsequent events past the valuation that you're  
24 looking at. Do you agree with that?

25 A. I do, yes.



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Liebman - Cross

1 Q. So when we're looking at the 2012 transfer to Alexbay, the  
2 Court will have to look at events as they existed in 2012.

3 THE COURT: Well, that's up to me.

4 MR. MULRY: Let me ask that a different way, your  
5 Honor.

6 Q. For your valuation, is it correct that you looked at the  
7 facts as they existed in 2012?

8 A. For the 2012 valuation, yes.

9 Q. Yes. Right.

10 Now, in your expert report, you opined on the value of  
11 Eber-Metro as of -- and Eber-Connecticut as of June 5th of  
12 2012, correct?

13 A. Yes.

14 Q. And you used that date, June 5th of 2012, and Frank Torchio  
15 used a date of May 23rd, 2012, correct?

16 A. I'd have to look at Mr. Torchio's report to confirm that.  
17 I --

18 Q. Do you remember there were two different dates, close in  
19 time?

20 A. I remember there was a May fiscal year end for the company,  
21 which is May 31st, 2012. I was instructed by counsel to do  
22 mine as of the June 5th date, I believe it was, which is a few  
23 days later. And there was no material changes.

24 Q. OK. That was my question. There's no material difference  
25 between your date for valuation and Mr. Torchio's date for

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Liebman - Cross

1 valuation.

2 A. Yes.

3 Q. As far as the dates are concerned.

4 In your report, you respond to certain comparable  
5 transactions that are identified in the Torchio report, Frank  
6 Torchio's report?

7 A. I didn't know if that was a question.

8 Q. It is a question.

9 A. Yes.

10 Q. Is that correct?

11 A. Yes.

12 Q. And you did not add any comparables of your own. You  
13 commented on the comparables that Mr. Torchio had identified.

14 A. To a degree. Part of my process, though, was not only to  
15 comment on his comparables and the other transactions that are  
16 independent of any work that he did, Mr. Torchio, but my staff  
17 and I did a search of our own comparables, and the unique  
18 nature of Eber-Connecticut is such that there are really no  
19 publicly traded comparable companies, and there is very limited  
20 transaction data applicable, statically meaningful data, as of  
21 the June 2012 date.

22 Q. But the comparables you commented on in your report and  
23 that you comment on in your direct testimony are the five  
24 comparables that Mr. Torchio identified. Is that correct?

25 THE COURT: Mr. Mulry, isn't that obvious?

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Liebman - Cross

1 MR. MULRY: It seems obvious to me, your Honor. I'm  
2 just asking --

3 THE COURT: Well, it seems obvious to me too. And I  
4 don't, I would prefer not to have extended cross-examination  
5 about how he spells his name, what time it is, or anything else  
6 that's perfectly obvious.

7 MR. MULRY: Very good, your Honor.

8 Q. Let's go to liabilities. In valuation, liabilities are an  
9 important part of valuation. If you're valuating a company,  
10 will you agree that their liabilities are important to the  
11 person doing the valuation?

12 A. Generally yes.

13 Q. Now, you are aware that Frank Torchio looked at certain  
14 liabilities of Eber-Metro. Is that correct?

15 A. Using the term "look," I don't know what that means.

16 Q. Let me rephrase that. In coming to a valuation opinion,  
17 Frank Torchio considered liabilities of Eber-Metro. Is that  
18 correct?

19 A. I know that he considered liabilities of Eber-Metro and  
20 Eber Wine & Liquor.

21 Q. OK. And among those are loans and lines of credit that  
22 Lester Eber made to one or more of those companies. Is that  
23 correct?

24 A. Yes.

25 Q. And so you acknowledge in your testimony, don't you, that

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Liebman - Cross

1 Lester's loan to Eber-Metro, as of fiscal year 2012, was  
2 \$3,060,711, on the books of Eber-Metro, right?

3 A. Yes.

4 THE COURT: Mr. Liebman, did you ever do any work to  
5 verify whether the books accurately reflected money that in  
6 fact was lent by Lester Eber, or to what extent they were  
7 accurate?

8 THE WITNESS: We attempted to, your Honor, and this is  
9 part of the duality of forensic accounting as it relates to  
10 business valuations that we do, in any setting. And we  
11 requested information insofar as the books and records. And it  
12 was very, very limited, in what was supplied to us to enable us  
13 to verify that loan that you're asking about.

14 THE COURT: So, insofar as loans allegedly made by  
15 Lester Eber, you assumed for purposes of your analysis that the  
16 books were accurate, but you have no personal knowledge about  
17 whether the books accurately reflected what had happened,  
18 correct?

19 THE WITNESS: Yes.

20 THE COURT: And you have no audit to verify that the  
21 numbers on the books accurately reflected what had happened.  
22 Is that right?

23 THE WITNESS: That's correct, your Honor.

24 THE COURT: All right. Let's go ahead.

25 BY MR. MULRY:

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Liebman - Cross

1 Q. There were interest rates on those loans and lines of  
2 credit, were there not?

3 A. Are we referring to Lester Eber's loans?

4 Q. Lester Eber's loans, yes.

5 A. Yes.

6 Q. And you have not commented or challenged in any way the  
7 appropriateness of the interest rate on Lester's loan or line  
8 of credit. Is that correct?

9 A. I'd have to go back to the line items in my report, if --  
10 whether I commented or not on those interest rates.

11 Q. So we can look back at your report and we can --

12 MR. BROOK: I will stipulate that Mr. Liebman did not  
13 offer an opinion on the interest rates on Lester Eber's loans.

14 THE COURT: OK. Let's go.

15 MR. MULRY: OK.

16 Q. There were certain other liabilities that Mr. Torchio  
17 considered that you did not consider in your valuation of  
18 Eber-Metro. Correct? Particularly with respect to pension  
19 liabilities.

20 MR. BROOK: Objection to form.

21 THE COURT: Sustained. Rephrase.

22 BY MR. MULRY:

23 Q. Are you aware that Mr. Torchio considered in his valuation  
24 potential PBC termination liability?

25 A. I'm struggling with the word "consider."

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Liebman - Cross

1 Q. What word would you use for what Mr. Torchio did, as you  
2 understood it from reading his report?

3 A. There's very little information that he provides on what  
4 led him to include them, those loans, the pension loan and the  
5 Teamsters loans. Those were the two most significant. He  
6 makes a deduction for them in terms of valuing the net value of  
7 Eber-Metro. Again, it's in a table. And I believe the  
8 verbiage, that he relied on counsel in terms of the  
9 applicability, and based on his conversation with counsel, he  
10 deducted them as, from the value.

11 Q. Is it fair to say that Mr. Torchio deducted what he saw as  
12 a potential termination liability -- a potential liability of  
13 in excess of \$5 million, and you did not?

14 A. Well, it's a contingent liability, just, just -- you know,  
15 that's the terminology of it, at that time, in May and June of  
16 2012. And, yes, he deducted an amount that was unknown as of  
17 that date because it was contingent, and it had not yet been  
18 decided. And I believe, based on a 2018 document, he elected  
19 to deduct in excess of \$5 million for that PBGC loan.

20 THE COURT: I'm sorry. Did he elect to deduct, or did  
21 he deduct pursuant to instructions given him by counsel?

22 THE WITNESS: The latter, your Honor.

23 Q. That's your interpretation of what Mr. Torchio did.

24 A. I can -- I have his report here. If you give me the  
25 opportunity to look I can double-check, but I'm pretty sure his

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Liebman - Cross

1 report, in the table, the summary table, he indicates that.

2 Q. Ultimately, the decision of whether or not -- would you  
3 agree that ultimately the decision of whether or not the PBGC  
4 liability is a liability of Eber-Metro is a question for the  
5 Court?

6 MR. BROOK: Objection to form.

7 THE COURT: It really doesn't matter whether he agrees  
8 that.

9 MR. MULRY: OK. I'll move on, then, Judge.

10 Q. The liability, the PBC liability of in excess of 5 million,  
11 if one were to consider that a liability of Metro, that would  
12 be a significant liability, would it not?

13 A. I don't know, because it was unknown at the time, as of May  
14 and June of 2012, what the outcome would be. There were  
15 certainly discussions that were going on between -- it wasn't  
16 Eber-Metro, just to be clear, it was Eber Wine & Liquor and  
17 PBGC. And it was unknown at that time what amount if any would  
18 result in a liability at that point.

19 Q. OK. We could go to your direct testimony, which is  
20 Plaintiff's Exhibit 1004, to paragraph 106, which is on page  
21 29.

22 THE COURT: Well, it's not on page 29 in mine.

23 THE WITNESS: Mine either.

24 MR. MULRY: Oh, you know, I apologize. I think I was  
25 using the one with the caption, but it is page 1 -- paragraph

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Liebman - Cross

1 106.

2 Q. When that comes up, if you could just read that paragraph  
3 to yourself.

4 A. OK.

5 Q. You've seen that?

6 A. Yes.

7 Q. So is it correct in paragraph 106 you are saying, among  
8 other things, that contingent liabilities --

9 THE COURT: Please don't read back what he just read  
10 to himself, that I have already received in evidence, and asked  
11 him whether it said.

12 MR. MULRY: All right.

13 Q. Contingent liabilities are not considered a valuation. Is  
14 it your opinion that a willing buyer will not take contingent  
15 liabilities of a company they're considering to purchase into  
16 account, when valuing a transaction?

17 A. They may.

18 Q. So there are certain times when a contingent liability will  
19 be of importance to a potential buyer of a company; isn't that  
20 correct?

21 A. Well, as it relates to this case, it, it also -- it depends  
22 on what the willing buyer is buying. We're looking first at  
23 the value of Eber-Connecticut, and this pension plan liability  
24 is not a liability of Eber-Connecticut as of May and June of  
25 2012. Contingent liabilities can also vary to a degree as to



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Liebman - Cross

1 where they are in relation to the litigation or the dispute  
2 that may be involved between debtor and lender. So when you  
3 say, would they take it into account, the willing buyer, they'd  
4 have to understand the contingent liability, where it is in the  
5 process, if the amount is estimable or not and to what degree,  
6 and if in fact there's any potential burden on the entity that  
7 they are acquiring.

8 Q. So a willing buyer would have to consider all of those  
9 things with respect to a contingent liability; is that correct?

10 THE COURT: No. It's not on the tablets Moses came  
11 down from Mt. Sinai with. An interested buyer might or might  
12 not consider it depending on the buyer's point of view, the  
13 objectives of the transaction, and what he thinks makes sense.  
14 Isn't that perfectly obvious, counsel?

15 MR. MULRY: Yes, your Honor. I'm trying to --

16 THE COURT: OK. It's perfectly obvious. Let's get on  
17 with it.

18 You know, if somebody gets bitten by a dog and sues  
19 the dog as owner for \$28 million, there is a contingent  
20 liability of \$28 million. Now, that may matter, to the  
21 insurance company asked to underwrite coverage, or it may not  
22 matter. And certainly the odds that it's going to be valued at  
23 \$28 million is extraordinarily slim, wouldn't you think?

24 MR. MULRY: In your Honor's example, yes.

25 THE COURT: Right. So this is a factor all across the

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Liebman - Cross

1 world of valuation, as we all know.

2 BY MR. MULRY:

3 Q. Is it your view that the potential PBGC liability that  
4 Mr. Torchio discussed is something akin to the judge's example  
5 of something a willing buyer would look at but just not  
6 consider because it's not important, or is not significant?

7 THE COURT: Sustained.

8 Q. Let's go to paragraph -- will you go to paragraph 108 of  
9 your direct testimony, and when we get to 108, if you could  
10 read that to yourself.

11 You've read that, Mr. Liebman?

12 A. Yes.

13 Q. Going five lines down from the top, your understanding that  
14 Eber-Metro's management believed that the pension funding  
15 liability would not follow Eber-Metro after the transfer to  
16 Alexbay, where did that understanding come from?

17 A. My review of the documents that I had available and my  
18 understanding of the facts.

19 Q. What documents or facts lead you to that understanding?

20 A. The pension liability with the PBGC ties directly to Eber  
21 Wine & Liquor, a company that was defunct long before 2012 in  
22 terms of its New York business operations. Eber Wine & Liquor  
23 owns Eber-Metro, which in turn owns Eber-Connecticut. There  
24 was a point, I believe it was in 2010, where Eber-Metro had  
25 owned 85 percent of Eber-Connecticut at that point, and there

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Liebman - Cross

1 was this transfer, sale of a 6 percent interest, to take  
2 Eber-Metro's interest down to 79 percent, which effectively, at  
3 that precise amount, based on that transaction, resulting in 79  
4 percent interest for Eber-Metro and Eber-Connecticut, takes it  
5 out of the control group, as defined under ERISA, by the PBGC.

6 So if now this transfer to Alexbay occurs -- and this  
7 is up to the Court of course, to decide if it's valid or not --  
8 the liability does not transfer, from Eber Wine & Liquor,  
9 regardless of whether it's 5 million, 5 cents, or 50 million,  
10 because it's no longer -- it would have no longer been in the  
11 control group and no longer been considered.

12 Q. The last part of what you --

13 THE COURT: Excuse me. So when you said "took it out  
14 of the control group," do I correctly understand that the "it"  
15 referred to Eber-Connecticut?

16 THE WITNESS: Yes, Eber-Connecticut and Eber-Metro,  
17 yes, your Honor.

18 THE COURT: Well, "it" is singular, so it can't be  
19 both.

20 THE WITNESS: It's Eber-Metro's interest, 79 percent  
21 effective interest in Eber-Connecticut.

22 THE COURT: Right. And so what I'm understanding you  
23 to say -- and please correct me if I'm wrong -- is that you  
24 understood that Eber-Metro's management believed that any  
25 pension liability would not follow Eber-Metro to Alexbay after

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Liebman - Cross

1 Alexbay acquired ownership of Eber-Connecticut because  
2 Eber-Connecticut was owned only 79 percent and therefore wasn't  
3 in the control group that was responsible for the pension  
4 funding shortfall at the Eber-Metro level or the higher level  
5 of Eber Wine & Liquor.

6 THE WITNESS: Exactly, your Honor. Just to clarify  
7 that last point that you said, the liability with the PBGC, is  
8 all up at the top at the Eber Wine & Liquor level, so --

9 THE COURT: OK.

10 THE WITNESS: Yes.

11 THE COURT: I understand.

12 BY MR. MULRY:

13 Q. So you have not made a legal conclusion as to all those  
14 liabilities as to which party -- which company is or is not  
15 within the control group or which company is or is not liable;  
16 is that correct?

17 A. I'm just purely looking at the percentages and explaining  
18 to the Court what happened, what existed, and that 79 is 1  
19 percent -- is 1 percent less than 80, which is the definition  
20 of a control group.

21 Q. And are you aware that there was -- let me just stay on the  
22 issue of Metro's management. The fact that you've highlighted  
23 percentages, leading to certain conclusions you've made, but  
24 with respect to the conclusion that Eber-Metro's management  
25 believed the pension liability would not apply, do you have

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Liebman - Cross

1 anything that specifically addresses what they believed that  
2 led you to that conclusion?

3 A. Sure. I mean, they were intimate with -- Eber-Metro's  
4 management is intimately involved in everything that had been  
5 going on from the early 2000s when this whole thing apparently  
6 stemmed from, back to 2003 and '4, and then when it surfaced  
7 around 2008 and continued onward through the valuation date in  
8 June of 2012. Eber-Metro's management was involved in the 6  
9 percent transfer to bring their 85 percent interest down to 79  
10 percent.

11 So knowing that they were intimately involved in  
12 making these decisions, I can't get in their head, but I can't,  
13 you know, fathom, having been doing this as long as I have in a  
14 25-year career, that they didn't know, by going under 80  
15 percent and doing that 6 percent transaction themselves, that  
16 the pension liability wouldn't follow to Alexbay.

17 Q. If Eber-Metro's management did believe that the pension  
18 liability would apply to Eber-Metro, would that change your  
19 analysis, factually, if that were the conclusion?

20 A. If the Court decides that, then possibly. The Court can  
21 then do what it pleases, if they believe or don't believe that  
22 management believed it or not.

23 Q. Were you aware -- in your review of documents for this  
24 case, did you review a decision from the Western District of  
25 New York holding that Eber-Metro and Eber-Connecticut were part

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Liebman - Cross

1 of the control group with respect to this pension plan  
2 liability?

3 A. I think, if you're referring to a document, there's a lot  
4 of documents --

5 Q. Sure. I think it's Defendants' Exhibit DD. We could put  
6 that up for you. We could just scroll through that. If you  
7 could just look at that. If you need to stop anywhere, let us  
8 know, just to see if that's a document you recognize as having  
9 reviewed for your testimony.

10 A. I mean, I could tell from the first page what it is, and,  
11 yes, I --

12 THE COURT: So the document that's being exhibited is  
13 DD as in David David, not EE as in Eisenhower Eisenhower.

14 Q. So were you aware that a final report determined that  
15 Eber-Metro was part of the control group?

16 MR. BROOK: Objection.

17 THE COURT: Sustained.

18 Q. In looking at -- I think you talked about Eber-Connecticut.  
19 If you were looking at a purchaser of Eber-Metro, if the  
20 potential PBGC liability were a liability of Eber-Metro, would  
21 you agree that fact would be relevant to a purchaser of  
22 Eber-Metro?

23 A. As of what date?

24 Q. As of any date, if it were a liability.

25 A. I can't really answer that question. You would have to

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Liebman - Cross

1 tell me a purchaser as of a date. A purchaser of any business,  
2 as an example, of any business in -- on February 1st of 2020,  
3 before COVID effectively shut down our economy, that's  
4 different than what they would have looked at and what they  
5 would have considered on March 31st or April 1st of 2020. So  
6 the date, I can't answer that without you providing me with a  
7 purchaser looking at it on a certain date.

8 Q. Is it fair to say that, in your experience in valuation,  
9 you are not very familiar with valuations where PBGC or pension  
10 plan liability is -- was involved?

11 A. I have had experience with them, with pension liabilities  
12 for businesses.

13 Q. In addition to the PBGC termination liability, Mr. Torchio  
14 also considered and had a deduction for Teamsters withdrawal  
15 liability. Are you familiar with that?

16 A. Yes.

17 Q. You do not consider any withdrawal liability to the  
18 Teamsters in your valuation; isn't that correct?

19 A. I'm struggling with the word "consider."

20 Q. What did you -- when -- what did you do when you were  
21 looking at the question of whether or not liabilities should be  
22 part of your analysis? Did you consider, did you value, did  
23 you --

24 THE COURT: Mr. Mulry, which of those many questions  
25 would you like to stick with?

L9FAKLElps

Liebman - Cross

1 MR. MULRY: Your Honor, just, I really -- "rely on."  
2 Is that something that's helpful? Is that -- "did you rely  
3 on?"

4 THE COURT: "Did you rely on" what?

5 MR. MULRY: Let me back up.

6 Q. In your final valuation, your final valuation for  
7 Eber-Metro and Eber-Connecticut does not have any deduction for  
8 Teamsters withdrawal liability; is that correct?

9 A. Yes.

10 Q. Did you see, at some point in your review for your  
11 testimony and for your expert report, that there was a  
12 confession of judgment with respect to Teamsters liability?

13 A. Yes.

14 MR. MULRY: I'll ask that that be brought up. That's  
15 Defendant's Exhibit F.

16 A. I see it. Could you continue to scroll through it? I want  
17 to make sure I recognize the entirety of the document.

18 Q. Mr. Liebman, have you had a chance to review that?

19 A. Yes.

20 Q. So you're familiar with the confession of judgment on the  
21 Teamsters withdrawal liability?

22 A. Yes.

23 Q. OK. Now, that was signed on behalf of Wine and Liquor,  
24 correct?

25 A. Yes.



L9FAKLElps

Liebman - Cross

1 Q. And you don't -- you have not reached a legal opinion as to  
2 whether Eber-Metro would be liable for the Teamsters liability;  
3 is that correct?

4 MR. BROOK: Plaintiffs will stipulate that Mr. Liebman  
5 has reached no legal opinions on anything.

6 BY MR. MULRY:

7 Q. Were you aware, in the course of your review of documents,  
8 that the Teamsters pension fund had assessed an employer  
9 withdrawal liability against the Eber control group for over \$2  
10 million in January of 2008?

11 A. Again, I don't want to comment. If you have a document,  
12 because there are so many documents on all these issues, I'd  
13 feel more comfortable answering.

14 Q. Why don't we go to Exhibit Z as in zebra. You can let us  
15 know when you've had a chance to recognize that if you do  
16 recognize it.

17 A. This first page I do, yes.

18 Q. In your --

19 A. Could you scroll back to the top, please.

20 Q. Sure.

21 A. OK. And, I'm sorry, if you can scroll down a bit. Thank  
22 you. OK.

23 Q. OK. You've looked at that?

24 A. Yes.

25 Q. So are you familiar with the fact that the PBGC made that

L9FAKLElps

Liebman - Cross

1 determination?

2 MR. BROOK: Objection to form. Not be the PBGC.

3 MR. MULRY: I'm sorry.

4 THE COURT: I couldn't hear whatever.

5 MR. MULRY: I misspoke.

6 MR. BROOK: I'm just correcting, he used the wrong  
7 entity name.

8 BY MR. MULRY:

9 Q. Were you aware that the Teamsters pension fund made that  
10 assessment?

11 A. I think it's a demand. I don't know if you're using that  
12 word interchangeably, but it's a demand for payment. I don't  
13 know if it's an assessment.

14 Q. Did you consider whether Eber-Metro would be considered  
15 part of the control group for that liability, the Teamsters  
16 liability?

17 A. Well, this would fall under my same line of analysis and  
18 logic as I just testified a short while ago with the PBGC  
19 liability in regard to the control group. The acts of the  
20 management of Eber-Metro, by taking their interest in  
21 Eber-Connecticut down to 79 percent, would have taken them out  
22 of the control group. And this demand is to Eber Brothers Wine  
23 & Liquor and its control group.

24 Q. But you're not making that as a legal conclusion, correct?  
25 Correct?

L9FAKLElps

Liebman - Cross

1 A. Making what as a legal conclusion?

2 THE COURT: Mr. Mulry, did you hear what Mister --

3 MR. MULRY: I did, your Honor, although he's making a  
4 statement that Eber-Metro is not part of the control group.

5 THE COURT: I don't care.

6 MR. MULRY: OK. I'll move on, then, your Honor.

7 Your Honor, we would move Defendant's Exhibit Z into  
8 evidence, as in zebra.

9 MR. BROOK: No objection as to the first document.  
10 It's actually a fairly large compilation, I now see. So  
11 there's like, I think, maybe 20 documents in this portion.

12 THE COURT: So which is the portion that's undisputed?

13 MR. BROOK: Just the first document.

14 THE COURT: Yes, but you've got to tell me what that  
15 is.

16 MR. BROOK: It looks like I missed that in going  
17 through it, so I have no objection.

18 THE COURT: All right. If there's no objection,  
19 Defendants' Z, as in zebra, is received.

20 (Defendant's Exhibit Z received in evidence)

21 BY MR. MULRY:

22 Q. Let's move on, Mr. Liebman, to the comparables. We  
23 discussed those at the start. There were five comparable  
24 transactions in Mr. Torchio's report, correct?

25 A. Yes.

L9FAKLElps

Liebman - Cross

1 Q. And you do not accept three of them and you accept two of  
2 them, correct? Is that correct?

3 A. Yes.

4 Q. OK. Let me just go through the ones that you did not agree  
5 should be included, just to check on some of the particulars.  
6 The first comparable is an acquisition by Capital Beverage  
7 Corporation of a company called Prospect Beverages. Do you  
8 recall that?

9 A. Yes.

10 Q. And Prospect Beverages was a beer distributor?

11 A. Are you asking me that?

12 Q. Yes, I'm asking you that.

13 A. Yes. Yes.

14 Q. And that transaction, is it correct that transaction took  
15 place in 2001?

16 A. Yes.

17 Q. You disregard this transaction, correct?

18 A. Yes.

19 Q. But you do agree that beer distribution and wine  
20 distribution are in a parallel broad industry?

21 A. Broadly, yes.

22 THE COURT: So is Mountain Dew. Could we move it  
23 along.

24 MR. MULRY: Yes. Sorry.

25 Q. So that's -- the fact that one sells beer and one sells

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Liebman - Cross

1 wine, that does not disqualify it from being a useful  
2 comparable, correct?

3 A. In and of itself that one fact?

4 Q. Yes.

5 A. Beer and wine? No, that would not alone disqualify it.

6 Q. If we could go to Plaintiff's Exhibit 1004, to paragraph  
7 74, and I'd ask you to read to yourself the sentence that  
8 begins "among other things."

9 A. OK.

10 Q. It is correct you don't have a day-to-day knowledge of the  
11 franchise laws for wine and liquor in Connecticut?

12 THE COURT: Well, I imagine whatever knowledge he has  
13 continues from day to day.

14 MR. MULRY: Yes, your Honor. It was a reference from  
15 the deposition, but why don't I move on.

16 Q. Are you familiar with the concept of dualing in  
17 Connecticut?

18 A. No.

19 Q. Are you aware that in Connecticut a supplier has the right  
20 to allow another distributor to become a distributor for that  
21 product even if it had an exclusive distributorship with the  
22 first distributor? Are you familiar with that concept?

23 A. As of today or when?

24 Q. As of today and going back to the time period at issue in  
25 this lawsuit.

L9FAKLElps

Liebman - Cross

1 A. So back to 2012?

2 Q. Yes.

3 A. No, I'm not.

4 Q. So that if someone is an exclusive distributor of a product  
5 in Connecticut, they are not necessarily going to remain as an  
6 exclusive distributor. Are you aware of that, under  
7 Connecticut franchise laws?

8 A. Potentially. I guess it would depend on the supplier, but  
9 potentially that could be the case.

10 Q. Are you familiar, in the course of your review, with the  
11 fact that Eber-Connecticut was dualled by certain suppliers  
12 between 2008 and 2012?

13 A. No.

14 Q. So then you're not familiar with the fact that they were  
15 dualled by their largest supplier?

16 A. No.

17 Q. Now, is it correct that from 2007 through 2012,  
18 Eber-Connecticut had negative EBITDA -- that's E-B-I-T-D-A --  
19 for each year?

20 A. For the fiscal-year ends May 31st of each of those years,  
21 yes.

22 Q. And Prospect Beverages, that first comparable, that also  
23 had negative EBITDA at the time of the transaction. Correct?

24 A. Could you give me a moment to check my report?

25 Q. Sure.

L9FAKLElps

Liebman - Cross

1 A. Thank you.

2 Yes, it did.

3 Q. It did. OK. Thank you.

4 So you did not consider the Farmer Brothers  
5 transaction. Let's move on to the -- I'm sorry -- the Prospect  
6 transaction. So let's move on to --

7 MR. BROOK: Objection to saying he did not consider.

8 THE COURT: Sustained.

9 Q. Let's move on to the Farmer Brothers comparable, which was  
10 a transaction in 2012. Are you familiar with that?

11 A. Yes.

12 Q. In 2012, this transaction is comparable in time to the  
13 Alexbay transaction; is that correct?

14 A. I just want to -- yes. But I want to correct it, though.  
15 It's not a transaction, Farmers Brothers. Farmers Brothers is  
16 a publically traded company. So what's going on here is, in a  
17 what's called market approach to valuation, there's two  
18 different methods. One is a comparable transaction method,  
19 where one company buys another company, could be a public  
20 company buying a private company or a private company buying a  
21 private company, but that's a comparable transaction, an  
22 acquisition upon which you could calculate a multiple as an  
23 indicator of value. That's what Prospect was. Farmers  
24 Brothers is a publicly traded company. And that is valued  
25 under what's called a guideline comparable company method,

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Liebman - Cross

1 where we look at the multiples of publicly traded companies and  
2 what their stock prices are trading for and how the market  
3 values them. So it's subtly different.

4 Q. Thank you for that clarification. Farmer Brothers, is it  
5 correct that the company also had negative EBITDA for their  
6 prior year, from the valuation date?

7 A. Yes.

8 Q. I believe you have distinguished this on the ground that  
9 wine and liquor is a market that's more heavily regulated than  
10 the coffee, tea, and spices market that Farmers is involved in?  
11 Am I correct on that?

12 A. That was one of the issues that I pointed out, yes.

13 Q. And for this proposition you're relying on Connecticut  
14 franchise laws?

15 A. I don't know what you mean by "proposition."

16 Q. This conclusion.

17 A. Among other things. There are other reasons. But yes.

18 Q. A third comparable is the 2010 transaction involving  
19 Eber-Connecticut and Polebridge Bowman. Are you familiar with  
20 that one?

21 A. Yes.

22 THE COURT: You're just skipping over the fact that  
23 Farmer and Eber are completely different businesses, with  
24 different products. You're not going to touch that subject?

25 MR. MULRY: I've raised that with him, and our expert



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Liebman - Cross

1 will be -- he's identified what -- why he did not value them.  
2 Our expert will explain why he did. And your Honor will make a  
3 credibility determination on those issues.

4 THE COURT: OK. I can't wait to hear how coffee and  
5 tea is equivalent to alcoholic beverages.

6 BY MR. MULRY:

7 Q. 2010, the Polebridge Bowman transaction, you're familiar  
8 with that transaction, correct?

9 A. Yes.

10 Q. So that was a sale of a 6 percent -- let me go back. That  
11 was -- Polebridge Bowman, was that a 6 percent interest in  
12 Eber-Connecticut, correct?

13 A. Yes.

14 Q. And they provided a \$350,000 nonrecourse promissory note;  
15 is that correct?

16 A. Yes.

17 Q. And it was payable in five years with an interest of  
18 2 percent. Correct?

19 A. Yes.

20 Q. You don't have any knowledge of the negotiations or  
21 discussions that led to that transaction; am I correct?

22 A. I wasn't sitting there with the negotiations, but I have a  
23 knowledge based on the documents that I received, and it was  
24 between an individual who worked, did work for the company. I  
25 believe he was a consultant or did some legal work. And it did

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Liebman - Cross

1 not qualify. That transaction really doesn't qualify as an  
2 arm's-length transaction leading to a reasonable market-based  
3 valuation.

4 Q. You don't know anything of the creditworthiness of  
5 Polebridge Bowman, do you?

6 A. No.

7 Q. Do you have -- and the 2 percent interest rate, you don't  
8 know why that was arrived at.

9 A. No.

10 Q. You compare the 2 percent in the Polebridge Bowman  
11 transaction to higher interest rates in the loans or lines of  
12 credit for Lester Eber; am I correct on that?

13 A. Yes.

14 Q. But the Polebridge Bowman note is a very different note  
15 than the loans that Lester made; is that correct?

16 MR. BROOK: Objection, form.

17 THE COURT: Sustained.

18 Q. There was a right of first refusal in connection with the  
19 Polebridge note. Are you familiar with that?

20 A. Yes.

21 Q. And so that limited the ability of Polebridge Bowman to  
22 sell its interest to another party?

23 A. Yes.

24 Q. Now, you're familiar with Eder-Goodman, correct?

25 A. Yeah.

L9FAKLElps

Liebman - Cross

1 Q. You mentioned that in your direct testimony.

2 MR. BROOK: He said yes.

3 Q. Oh, I'm sorry. You said? I'm sorry. I didn't hear that.

4 MR. BROOK: I'm sorry. I just pointed out to counsel  
5 that the witness said yes.

6 MR. MULRY: I apologize. I did not hear that.

7 Q. Eder-Goodman is a market competitor of Eber-Connecticut,  
8 correct?

9 A. They're in the wine and liquor industry, yes, wholesale  
10 industry.

11 Q. And by 2010, Eder-Goodman had purchased a 15 percent  
12 interest in Eber-Connecticut, correct?

13 A. Yes.

14 Q. And as part of that agreement, Eder-Goodman had a right of  
15 first refusal with respect to transfers of stock. Are you  
16 familiar with that?

17 A. Yes.

18 Q. And with respect to this transaction in 2010, Eder-Goodman  
19 signed a joinder agreement with respect to the transfer that  
20 was also signed by Polebridge Bowman and Eber-Connecticut. Are  
21 you familiar with that?

22 A. You have to show me a document on that one.

23 MR. MULRY: Sure. That would be Defendants' Exhibit  
24 five Hs, HHHHH.

25 THE COURT: Do you have a question?

L9FAKLElps

Liebman - Cross

1 BY MR. MULRY:

2 Q. Do you recognize that as the joinder agreement?

3 A. I do. If you could scroll to the bottom. I just -- I  
4 don't recall if it was executed or not, by all parties.

5 OK.

6 Q. So Eder-Goodman signed the joinder agreement with respect  
7 to the 2010 Polebridge Bowman transaction; is that correct?

8 A. Yes.

9 Q. The fourth comparable is an offer from Southern for 15  
10 percent of Eber-Connecticut. Are you familiar with that one?

11 A. Yes.

12 Q. That is one that you do consider. Right?

13 MR. BROOK: Objection to form.

14 THE COURT: Sustained as to form.

15 Q. That is one that you do consider a fair comparable; is that  
16 correct?

17 A. Yeah. I think the term really, what I did is, I considered  
18 it in terms of analyzing it, being synonymous with considered,  
19 and I applied it and utilized it for purposes of my valuation.

20 THE COURT: You considered it an appropriate  
21 comparable.

22 THE WITNESS: I did, your Honor.

23 THE COURT: Is that right?

24 THE WITNESS: Yes.

25 THE COURT: All right.

L9FAKLElps

Liebman - Cross

1 BY MR. MULRY:

2 Q. This was a proposed transaction where Southern would  
3 acquire a 15 percent interest in Eber-Connecticut as a way to  
4 repay a \$3 million bridge loan; is that fair to say?

5 A. Yes.

6 Q. And is it correct, in looking at your valuation, that you  
7 make a straight-line calculation that, if 3 million is the  
8 price on the transaction for 15 percent interest, the  
9 shareholder equity value is 30 million -- I'm sorry,  
10 withdrawn -- is -- let me restate that.

11 You make a straight-line assumption that if it's 3  
12 million for 15 percent interest, the shareholder equity value  
13 of Eber-Connecticut is 20 million.

14 A. Yes.

15 Q. And you don't give any deduction off of that straight-line  
16 assumption; am I right?

17 A. Yes.

18 Q. Now, Southern in this transaction would have received a lot  
19 more than just the 15 percent; is that correct?

20 THE COURT: Sustained as to form.

21 Q. If we could put that up just so you could see it. We'll  
22 get that up so that you can look at it.

23 THE COURT: There were certain other rights beyond the  
24 ownership of 15 percent that apply or got in that transaction,  
25 right?

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Liebman - Cross

1 THE WITNESS: Yes.

2 THE COURT: One was a right of first refusal, yes?

3 THE WITNESS: Yes.

4 THE COURT: And there were others. Yes?

5 THE WITNESS: Yes.

6 THE COURT: And you considered that, but there were  
7 also detriments that came along with being a 15 percent  
8 shareholder, right?

9 THE WITNESS: Yes.

10 THE COURT: The control of the company and its  
11 operations was entirely in the hands of the majority owner.  
12 Right?

13 THE WITNESS: Yes, your Honor.

14 THE COURT: And it was the majority owner who, had the  
15 whole company been sold or had its position -- let me rephrase  
16 it. The majority owner was in a position to sell control of  
17 the company and thereby obtain a control premium; isn't that  
18 right?

19 THE WITNESS: Yes, your Honor.

20 THE COURT: But you didn't factor the control premium  
21 into the \$20 million valuation, did you?

22 THE WITNESS: I did not.

23 THE COURT: That was a conservative assumption on your  
24 part.

25 THE WITNESS: Yes, your Honor.

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Liebman - Cross

1 THE COURT: And it's your opinion that whatever  
2 additional benefit went along to the buyer of the 15 percent  
3 was more than offset by the effect of the 85 percent owner  
4 having control of the business and the possibility of securing  
5 a control premium in the event of a sale; is that right?

6 THE WITNESS: Exactly, your Honor.

7 THE COURT: OK. I read the whole report. Let's move  
8 on.

9 MR. MULRY: OK, your Honor.

10 BY MR. MULRY:

11 Q. In addition to the rights that the judge had mentioned,  
12 there were also tag-along rights, is that correct, that would  
13 allow Eder-Goodman to share any premium if there were a sale?

14 A. Yes.

15 MR. MULRY: If I could just have a moment, your Honor,  
16 I'll be ready to move on to the next one.

17 THE COURT: Good idea.

18 MR. BROOK: The question --

19 MR. MULRY: I said will go to Eder-Goodman after this.

20 MR. BROOK: You just asked about Eder-Goodman having  
21 tag-along rights.

22 MR. MULRY: Oh, I'm sorry. Apparently I misspoke.  
23 The question was whether Southern under this transaction would  
24 have tag-along rights.

25 THE COURT: I'm sorry. I couldn't understand your

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Liebman - Cross

1 question.

2 MR. MULRY: I'm sorry, your Honor.

3 Q. I asked a previous question. The judge had referenced  
4 several rights that Southern would have received in this  
5 transaction. They also, Southern, also would have received  
6 tag-along rights so that they could share in any premium on a  
7 sale of the company. Is that correct?

8 A. Yes.

9 Q. Now, in your report with respect to this Southern  
10 transaction, you do a calculation, and it's paragraph 34 of  
11 your report.

12 THE COURT: I take it we're referring to Plaintiff's  
13 Exhibit 1004 of the report.

14 MR. MULRY: Yes, we are.

15 Oh, I'm sorry, your Honor. Again I misspoke. I  
16 apologize. It's the declaration, Exhibit 1004.

17 THE COURT: All right.

18 MR. MULRY: Page 9, 35.

19 THE COURT: Is there going to be a question?

20 MR. MULRY: I wanted to make sure it was up for him so  
21 that he could see it. If he can answer the question without  
22 seeing it I'm happy to --

23 THE COURT: What paragraph?

24 MR. MULRY: It's paragraph 35.

25 THE COURT: Thank you.



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Liebman - Cross

1 MR. MULRY: You can let me know when you're there,  
2 Mr. Liebman.

3 A. I'm there.

4 Q. OK. With respect to these calculations and calculations  
5 throughout your report, they're essentially mathematical  
6 calculations, correct?

7 THE COURT: That's what calculations are.

8 MR. MULRY: Yes, your Honor.

9 Your Honor, these next three questions are just to  
10 streamline things. I just, I'm trying to avoid going through  
11 the math with him, so that we can all do the math. And  
12 that's -- my question is:

13 Q. With respect to your report, you say what values go into  
14 various formulas, and we can plug those in. For that reason,  
15 I'm not going to go through the math with you. But am I  
16 correct that, if we read your report, we know which figures --  
17 I'm sorry -- if we read your testimony, we know which  
18 calculations you're making, which figures you're using for  
19 those calculations, and we can rely on that?

20 THE COURT: What are you talking about? You're saying  
21 that if we read your report we can actually see what's there.

22 MR. MULRY: We can do --

23 THE COURT: Is that the question?

24 MR. MULRY: As long as -- your Honor, I'm just  
25 setting -- making sure that the witness does -- I'm not going

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Liebman - Cross

1 to go through the math with him. We can all do that  
2 separately. And I can just move on.

3 THE COURT: Counsel, the question is, with all due  
4 respect, meaningless.

5 MR. MULRY: OK. Thank you, your Honor.

6 BY MR. MULRY:

7 Q. Let's go to the last of the five comparables, which is the  
8 Eder-Goodman purchase of a 15 percent interest in 2008. You're  
9 familiar with that, right?

10 A. Yes.

11 Q. Now, Mr. Eder, Andrew Eder, who's a principal of  
12 Eder-Goodman, testified yesterday. You were not here.  
13 Correct?

14 I'll make some statements that -- we don't have the  
15 transcript either. So I'll do them in the form of a  
16 hypothetical if he were to testify that a certain fact would  
17 have changed your opinion. OK? For example, if Andrew Eder  
18 said that with respect to this transaction there were no  
19 negotiations, would that affect -- that fact affect your  
20 analysis of the valuation for this transaction?

21 A. That single statement, that there were no negotiations?

22 Q. Let me do a number of things, then. If he were to have  
23 said there were no negotiations, that a lawyer for  
24 Eber-Connecticut said the proposal was for 15 percent of  
25 Eber-Connecticut at 4.5 million, and that that was a

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Liebman - Cross

1 take-it-or-leave-it offer, and if he further said that there  
2 was no due diligence --

3 THE COURT: Sustained. Compound.

4 Q. If he said there were no negotiations, would that be  
5 important to you, as a valuer, as a valuation expert?

6 A. It's hard to say. It's a single statement. I don't know  
7 what else he would have said or did say yesterday or back then  
8 when he was doing the transaction in conjunction with that. So  
9 I don't think it would alone, those couple of words, that  
10 statement that you just said, would change the opinion of  
11 value.

12 Q. If he said there were no due diligence, would that be an  
13 important fact for your valuation?

14 A. Again, I don't know what he means by "due diligence." You  
15 know, due diligence can range from bringing in an army of  
16 forensic valuers and auditors and accountants to bore through  
17 the books and records for two months. Due diligence to  
18 somebody else could be years of financial statements and if I  
19 know the industry really well and I'm familiar with it and I've  
20 done a lot of acquisitions that's enough due diligence. So I  
21 don't know.

22 Q. If you could go to paragraph 48 of your direct testimony,  
23 Plaintiff's Exhibit 1004.

24 A. Sorry. Which paragraph?

25 Q. 48.

L9FAKLElps

Liebman - Cross

1           You can tell me when you're set.

2       A.   I'm set.

3       Q.   You say Eder-Goodman was provided with the financials for  
4       the fiscal year end 2007. Do you see that?

5       A.   Yes.

6       Q.   And you based your calculations on the 2007 financials,  
7       correct?

8       A.   If you give me a moment.

9       Q.   Sure.

10      A.   Yes.

11      Q.   If actually they were given the financials for 2006,  
12      because the 2007 financials were not prepared yet, that would  
13      change the numbers that go into your mathematical calculations;  
14      is that correct?

15      A.   Possibly. I'd have to look back and see what the 2006  
16      numbers were.

17           MR. BROOK: Plaintiffs would like to note for the  
18      record that the 2006 numbers have not been produced in  
19      discovery.

20           THE COURT: Move it along, Mr. Mulry.

21           MR. MULRY: Yes, your Honor.

22      BY MR. MULRY:

23      Q.   Just as, in the Southern proposed transaction, there were a  
24      number of rights, there were a number of rights in the 2008  
25      Eder-Goodman analysis; is that correct?

L9FAKLElps

Liebman - Cross

1 A. Yes.

2 Q. And one was a liquidation preference. Are you familiar  
3 with that?

4 A. Yes.

5 Q. So with respect to the \$4.5 million investment,  
6 Eder-Goodman would receive that back if there was a sale of the  
7 company before other equity shareholders received their shares.  
8 Is that correct?

9 A. Yes.

10 Q. So the Eder-Goodman shares were substantially equivalent to  
11 a convertible preferred equity security; would you agree with  
12 that?

13 A. I would, yes.

14 Q. And would you agree that that, that convertible preferred  
15 stock, is often used as a source of capital when companies --  
16 where there's a risk of financial distress?

17 A. Not necessarily. There's companies that do preferred stock  
18 that are not in distress.

19 Q. So you did make an adjustment for the preference, correct,  
20 of 15 percent in your valuation?

21 A. Conservatively, yes.

22 Q. And you made no other adjustments for any other rights.

23 A. I would say, similar to my testimony before, as with  
24 Southern, that Metro, through its control level of ownership of  
25 85 percent that it would still have, would have been afforded

L9FAKLElps

Liebman - Cross

1 significant, significantly more rights in terms of running the  
2 day-to-day operation, the ability to sell the company, and so  
3 forth, that would have more than offset, should offset many of  
4 those rights that they had.

5 Q. Would Eder-Goodman also receive --

6 A. Eder-Goodman would have obtained, did obtain.

7 Q. I'm sorry?

8 A. That Eder-Goodman obtained.

9 Q. Eder-Goodman also received the right of first refusal in  
10 that transaction, yes?

11 A. Yes.

12 Q. And you would agree that's an important right?

13 THE COURT: What does "important" mean here?

14 MR. MULRY: OK. Well, let me rephrase that.

15 Q. If Anthony Eder said that this was an important right and  
16 Anthony Eder said that they paid more for getting the right of  
17 first refusal, would that affect your analysis or consideration  
18 of whether there should be a deduction for the right of first  
19 refusal?

20 MR. BROOK: Objection unless Anthony Eder means Andrew  
21 Eder.

22 MR. MULRY: It does.

23 MR. BROOK: There are several Eders.

24 MR. MULRY: I'm sorry.

25 Q. Andrew Eder.

L9FAKLElps

Liebman - Cross

1 A. Possibly. You know, I'd have to know what he said in the  
2 context of how he said that.

3 Q. Another right that Eder-Goodman received was to enforce a  
4 cap of \$5 million on indebtedness for Eber-Connecticut. Are  
5 you familiar with that?

6 A. Yes.

7 (Continued on next page)

L9FsKLE2

Cross - Liebman

1 BY MR. MULRY:

2 Q. That's not something that you gave another deduction for,  
3 correct?

4 A. I don't know what you mean by deduction.

5 Q. Well, you made a 15 percent adjustment for the preference,  
6 correct?

7 A. The 15 percent adjustment is arrived at by taking both  
8 sides of the transaction, the buyer and the seller, into  
9 account and looking at what rights and privileges are afforded.  
10 You know, there are privileges certainly that we have been  
11 talking about, liquidation privileges, right of first refusal,  
12 things like that, that Eder-Goodman obtained there. With other  
13 significant rights that Eber-Metro obtained by continuing to  
14 hold a large 85 percent majority interest running the company,  
15 day-to-day operations, more board seats, the ability to sell  
16 the company if they wanted to.

17 You could say that those rights offset one another.  
18 There were certain aspects with regard to Eder-Goodman that  
19 they obtained relative -- for example, Southern, what they were  
20 offering, that was a little bit more than what Southern was  
21 getting.

22 So that's where I arrived, at the end of the day,  
23 taking all that into account, to include that 15 percent  
24 premium.

25 MR. MULRY: Your Honor, I don't have a lot more.



L9FsKLE2

Redirect - Liebman

1 There was one thing I would like to discuss with counsel with  
2 respect to Mr. Eder's testimony, which I think just became  
3 available.

4 But if we could take a short break, would be done  
5 within ten minutes, at most.

6 THE COURT: We'll take ten minutes.

7 MR. MULRY: Thank you, your Honor.

8 (Recess)

9 THE COURT: Any more questions, Mr. Mulry?

10 MR. MULRY: No further questions, your Honor.

11 THE COURT: All right. Thank you.

12 Any redirect?

13 MR. BROOK: Just two questions, your Honor.

14 THE COURT: Thank you.

15 MR. BROOK: Technically three, just to orient  
16 ourselves.

17 REDIRECT EXAMINATION

18 BY MR. BROOK:

19 Q. At the time you formed your opinion, did you know whether  
20 Eder-Goodman valued Eber-Connecticut based on gross profit  
21 rather than Eber revenue?

22 A. Back in 2012?

23 Q. Back when you formed your original opinions, before you  
24 testified today.

25 A. No, I didn't.

L9FsKLE2

Redirect - Liebman

1 Q. Then just to orient ourselves, you made an adjustment to  
2 the valuation of Eder-Goodman based on liquidation preference,  
3 correct?

4 A. Yes.

5 Q. Would it affect your opinion if the Eder-Goodman  
6 transaction price of \$4,500,000 was determined before  
7 Eder-Goodman negotiated a liquidation preference for itself?

8 A. Possibly.

9 MR. BROOK: OK. Nothing further.

10 THE COURT: Thank you.

11 Recross?

12 MR. MULRY: Nothing, your Honor.

13 THE COURT: I have a couple of questions, just so that  
14 we're all clear here.

15 The valuation of a business or an interest in a  
16 business is ultimately a question of judgment, is it not?

17 THE WITNESS: Yes.

18 THE COURT: One of the things that you and others,  
19 doing what you do, consider --

20 Well, let me withdraw that and ask a different  
21 question first.

22 The search and valuation is to determine what a  
23 willing buyer, under no compulsion to buy, would offer, and  
24 what a willing seller, under no compulsion to sell, would  
25 accept for the asset or company in question, right?

L9FsKLE2

Redirect - Liebman

1 THE WITNESS: Yes.

2 THE COURT: And that's a judgment call?

3 THE WITNESS: Yes.

4 THE COURT: All right. One of the things that you and  
5 others consider in forming a judgment as to value, where data  
6 is available, is comparable transactions, right?

7 THE WITNESS: Yes.

8 THE COURT: And seldom is it the case that there are  
9 comparables as to which every pertinent detail of a comparable  
10 to the proposed transaction or the transaction that you're  
11 valuing is identical, true?

12 THE WITNESS: That would be true, yes.

13 THE COURT: There are differences in the nature of the  
14 business, true?

15 THE WITNESS: Yes.

16 THE COURT: There are differences in the data that may  
17 be available, true?

18 THE WITNESS: Yes.

19 THE COURT: There are differences in the structure of  
20 the transaction, true?

21 THE WITNESS: Yes.

22 THE COURT: There are differences in the terms of the  
23 transaction, true?

24 THE WITNESS: Yes.

25 THE COURT: And in selecting comparables to consider,

L9FsKLE2

Redirect - Liebman

1 the valuer forms a professional judgment as to what is  
2 sufficiently close in characteristics to warrant consideration  
3 and others that are not sufficiently close in the judgment of  
4 the valuer to bear on the determination of value, is that  
5 right?

6 THE WITNESS: Yes.

7 THE COURT: All right. And that's what you did here,  
8 yes?

9 THE WITNESS: I did, yes.

10 THE COURT: All right. I have no further questions.  
11 If anybody wants to ask anything else in light of what  
12 I've inquired...

13 MR. BROOK: No, your Honor.

14 MR. MULRY: No, your Honor.

15 THE COURT: All right. Thank you, Mr. Liebman.  
16 You're excused.

17 THE WITNESS: Thank you, your Honor.

18 (Witness excused)

19 THE COURT: OK. Mr. Brook.

20 MR. BROOK: At this time, there are no further  
21 witnesses. Your Honor has received the parties' joint  
22 deposition designations. The last remaining part of  
23 plaintiffs' case is to offer certain documentary exhibits into  
24 evidence, which I can read into the record. And then at the  
25 end, I will note for the record which exhibits the defense

L9FsKLE2

Redirect - Liebman

1 objects to for your Honor to later rule upon.

2 THE COURT: OK.

3 MR. BROOK: Let me go to the podium. This will be a  
4 long list. And the numbers are all plaintiffs' exhibits.

5 Two, three, six, seven, eight --

6 MR. MULRY: I apologize for interrupting. Just three,  
7 I don't think that we had that on the list.

8 Two, three?

9 MR. BROOK: I probably don't care about it. I don't  
10 need three. Let's omit three then, if that's not on the list.  
11 I think you have a PDF, though.

12 MR. MULRY: It's two...

13 MR. BROOK: 2, 6, 7, 8, 9, 11, 14, 21, 22, 23, 27, 28,  
14 29, 31, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 47, 48, 50, 53,  
15 54, 55, 57, which I will note was used yesterday -- I'm not  
16 sure whether it was offered into evidence by defense counsel --  
17 58, 59, 61, 62, 63, 65, 66 -- I'm sorry, 66 is already in --  
18 67, 68, 70, 71, 72, 73, 76, 77, 79, 80, 81, 83, 84, 86, 89, 93,  
19 95, 98, 102, 103, 105, 108, 109, 112, 114, 115, 116, 121, 122,  
20 124, 125, 130, 133, 134, 135, 136, 137, 138, 139, 151, 153,  
21 154, 156, 157 -- I'm just going to leave out the word 100 to  
22 make it faster -- 158, 159, 160, 162, 164, 165, 166, 168, 169,  
23 171, 172, 174, 175, 176, 177, 179, 191, 192, 193, 194, 195,  
24 196, 197, 199 -- I'm sorry, 199 is already in -- 202, 203, 205,  
25 207, 209, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233,

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1 234, 235, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246,  
2 247, 248, 250, 252, 253, 254.

3 THE COURT: Are we getting there?

4 MR. BROOK: Very close, your Honor.

5 255, 257, 259, 260, 262, 263, 265, 267, 269, 280, 281,  
6 and that is it.

7 THE COURT: All right. The objections that the  
8 defendant has made are on a piece of paper, right?

9 MR. BROOK: Yes. Actually, I said that's it. I have  
10 a couple that are offered only for a limited purpose that I  
11 wanted to separate.

12 Exhibits 45 and 46 are affidavits from Lester Eber  
13 that are offered solely for purposes of showing what was said  
14 to a court, not for the truth of the matter as asserted.

15 Then there are interrogatory responses that we also  
16 would like to introduce, but not necessarily the entire  
17 document.

18 Exhibit 88, we offer all of it.

19 Exhibits 141, we offer the response to number four.

20 Exhibit 142, interrogatory numbers one and nine.

21 Exhibit 143 is a letter that followed up on  
22 interrogatory responses. We offer only the three bullet points  
23 on page two.

24 Exhibit 144, we offer the response to No. 16.

25 147, we offer all except for the response to number

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1 22.

2 148 and 149, we offer all.

3 As to the objections, defense objects to Exhibits

4 31 --

5 THE COURT: Is there a piece of paper that says it?

6 MR. BROOK: Yes, your Honor, I believe the objections  
7 are all on the exhibit list that has been delivered to the  
8 court.

9 THE COURT: Is that in the pretrial order, or is it  
10 somewhere else?

11 MR. BROOK: It is in the pretrial order. It has been  
12 updated recently. We can file it on ECF.

13 THE COURT: Just so we know.

14 MR. MULRY: It is in the plaintiffs' exhibits with the  
15 defendants' objection submitted to the portal with Mr. Mohan.

16 We could follow up with a letter just outlining what  
17 the objections are, if that would be easier for the court.

18 THE COURT: That would be. And don't change it from  
19 what you have done.

20 MR. MULRY: We won't.

21 THE COURT: File it on ECF, defendants' objections to  
22 plaintiffs' exhibits, then I'll have it.

23 MR. MULRY: Thank you, your Honor.

24 THE COURT: Plaintiffs' exhibits are all received  
25 subject to the objections.

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1 (Plaintiff's Exhibits 2, 6, 7, 8, 9, 11, 14, 21, 22,  
2 23, 27, 28, 29, 31, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 47,  
3 48, 50, 53, 54, 55, 57, 58, 59, 61, 62, 63, 65, 67, 68, 70, 71,  
4 72, 73, 76, 77, 79, 80, 81, 83, 84, 86, 89, 93, 95, 98, 102,  
5 103, 105, 108, 109, 112, 114, 115, 116, 121, 122, 124, 125,  
6 130, 133, 134, 135, 136, 137, 138, 139, 151, 153, 154, 156, 157  
7 158, 159, 160, 162, 164, 165, 166, 168, 169, 171, 172, 174,  
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9 203, 205, 207, 209, 224, 225, 226, 227, 228, 229, 230, 231,  
10 232, 233, 234, 235, 237, 238, 239, 240, 241, 242, 243, 244,  
11 245, 246, 247, 248, 250, 252, 253, 254, 255, 257, 259, 260,  
12 262, 263, 265, 267, 269, 280, 281 received in evidence)

13 MR. BROOK: At this point, with the deposition  
14 designations being the last piece, plaintiffs rest their case.

15 THE COURT: OK. Now, Mr. Mulry, what are we going to  
16 have next week on your case?

17 MR. MULRY: Next week, your Honor, we have three  
18 witnesses. The first witness will be Wendy Eber, who has  
19 submitted a declaration.

20 THE COURT: Yes.

21 MR. MULRY: We have a remote witness, who is Michael  
22 Gallagher. He was an actuary for the companies.

23 Then the third witness is Frank Torchio, who is  
24 defendants' expert.

25 THE COURT: Are we going to need all three days?



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Redirect - Liebman

1 MR. MULRY: It would depend on the length of time for  
2 the cross of Ms. Eber.

3 I expect Michael Gallagher to be a very short witness,  
4 and I would expect -- Mr. Torchio is the defendants' expert  
5 witness. If today's testimony is some indication, he would not  
6 take a full day, possibly half a day.

7 So we may only need Tuesday and Wednesday, but I would  
8 defer to Mr. Brook on expectations with respect to the length  
9 of Ms. Eber's cross.

10 MR. BROOK: I would agree as to Mr. Gallagher's cross  
11 being relatively short, maybe 10, 15 minutes.

12 As to Mr. Torchio, I probably won't go more than an  
13 hour, hour and a half, at the absolute most. I might not even  
14 cross-examine him.

15 As to Ms. Eber -- and I want to try to say this in a  
16 way without sort of sounding like I'm disparaging her. The  
17 fact is, during depositions, answers were extraordinarily slow  
18 and nonresponsive. That is going to significantly affect the  
19 length of my cross. I believe if I could get -- if I get  
20 prompt, responsive answers, I would be done in less than a day.

21 I think there is a very good chance that we will be  
22 done by the middle of the day on Wednesday, and I would say I'm  
23 very, very optimistic we will be done before Thursday, the  
24 23rd.

25 THE COURT: OK. I do repeat my suggestion that you

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Redirect - Liebman

1 folks sort of figure out a way to settle this case.

2 MR. BROOK: Understood.

3 THE COURT: OK. Thank you.

4 (Adjourned to Tuesday, September 21, 2021, at  
5 9:30 a.m.)

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